

Estate of Roger Owensby vs. City of Cinti.  
October 17, 2003

PATRICK E. CATON

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## UNITED STATES DISTRICT COURT

## SOUTHERN DISTRICT OF OHIO

## WESTERN DIVISION

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ESTATE OF ROGER D. :  
OWENSBY JR., et al., :  
Plaintiffs, :  
vs. : Case No. 01-CV-769  
: (Judge S. A. Spiegel)  
CITY OF CINCINNATI, :  
et al., :  
Defendants. :  
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Videotaped deposition of PATRICK EDMUND CATON, a defendant herein, called by the plaintiffs for cross-examination, pursuant to the Federal Rules of Civil Procedure, taken before me, Wendy Davies Welsh, a Registered Diplomate Reporter and Notary Public in and for the State of Ohio, at the offices of Helmer, Martins & Morgan Co. LPA, 1900 Fourth & Walnut Centre, 105 East Fourth Street, Cincinnati, Ohio, on Friday, October 17, 2003, at a.m.

Estate of Roger Owensby vs. City of Cinti.  
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1 APPEARANCES:  2 On behalf of the Plaintiffs:  3 Paul B. Martins, Esq. Don Stiens, Esq. 4 Frederick M. Morgan, Jr. Esq. Helmer, Martins & Morgan Co., LPA 5 Suite 1900, Fourth & Walnut Centre 105 East Fourth Street 6 Cincinnati, Ohio 45202 Phone: (513) 421-2400  7 John J. Helbling, Esq. The Helbling Law Firm, L.L.C. 3672 Springdale Road Cincinnati, Ohio 45251 Phone: (513) 923-9740  10 On behalf of the Defendants City of Golf Manor, Stephen Tilley, Roby Heiland and Chris Campbell:  12 Lynne Marie Longtin, Esq. Rendigs, Fry, Kiely & Dennis 900 Fourth & Vine Tower One West Fourth Street 14 Cincinnati, Ohio 45202-3688 Phone: (513) 381-9200  16 On behalf of Defendants City of Cincinnati, Darren Sellers, Jason Hodge:  17 Geri Hernandez Geiler, Esq. Assistant City Solicitor and 19 Julie F. Bissinger, Esq. Chief Counsel Department of Law Room 214, City Hall 21 801 Plum Street Cincinnati, Ohio 45202 Phone: (513) 352-3346  23 24	Page 2  1 S T I P U L A T I O N S 2 It is stipulated by and among counsel for the 3 respective parties that the deposition of PATRICK 4 EDMUND CATON, a defendant herein, called by the 5 plaintiffs for cross-examination, pursuant to the 6 Federal Rules of Civil Procedure, may be taken at 7 this time by the notary; that said deposition may be 8 reduced to writing in stenotype by the notary, whose 9 notes may then be transcribed out of the presence of 10 the witness; and that proof of the official 11 character and qualifications of the notary is 12 expressly waived.  13 - - - 14 15 16 17 18 19 20 21 22 23 24
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1 APPEARANCES (Continued):  2 On behalf of the Defendants Robert B. Jorg, Patrick Caton, Jason Hodge, Victor Spellen and 3 Darren Sellers:  4 Donald E. Hardin, Esq. Hardin, Lefton, Lazarus & Marks, LLC 5 915 Cincinnati Club Building 30 West Garfield Place 6 Cincinnati, Ohio 45202 Phone: (513) 721-7300  7 Also present: 8 Richard W. Grubb, Videographer 9 Lisa Damstrom, Law Clerk 10 Helmer, Martins & Morgan Co., L.P.A. 11 Wendy M. Weller, Paralegal Buckley, King & Bluso 12 Mr. Roger Owensby 13 Mrs. Brenda Owensby 14 Mr. Shawn Owensby 15 Victor N. Spellen 16 17 - - - 18 19 20 21 22 23 24	Page 3  1 I N D E X 2 Examination by: Page 3 Mr. Martins . . . . . 6 4 Ms. Longtin . . . . . 232 5 Mr. Martins. . . . . 238 6 - - - 7 8 E X H I B I T S 9 10 Deposition Exhibit 28 ..... 22 10 Deposition Exhibit 29 ..... 30 10 Deposition Exhibit 30 ..... 43 11 Deposition Exhibit 31 ..... 65 11 Deposition Exhibit 32 ..... 115 12 Deposition Exhibit 33 ..... 186 12 Deposition Exhibit 34 ..... 191 13 Deposition Exhibit 35 ..... 194 13 Deposition Exhibit 36 ..... 207 14 15 - - - 16 17 18 19 20 21 22 23 24
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<p style="text-align: right;">Page 34</p> <p>1 Marine Corps, active duty from September of 1990 2 through March 15 of 1996? 3 A. 1995. It -- it should -- 4 Q. Oh, is it '95? 5 A. Where's the -- where is the closing date? 6 Q. It says date of discharge -- see date of 7 discharge is about three -- four lines from the 8 bottom? 9 A. One, two, three. That's incorrect. That 10 should be -- that's my mistake. It should read 11 1995. 12 Q. All right. So about four and a half 13 years? 14 A. With OCS that'd make it an even five. 15 That -- those -- those dates would culminate my 16 active duty service in the fleet. 17 Q. When you say OCS, does that stand for 18 Officer Candidate School? 19 A. That's correct. 20 Q. So you started off as an enlisted man? 21 A. No, I did not. I started off on a college 22 program called Platoon Leaders Course. 23 Q. In any event, you received a discharge in 24 March of '95?</p>	<p style="text-align: right;">Page 36</p> <p>1 A. Yes. 2 Q. Go to the next page, C001631. That is the 3 oath that you took to become a Cincinnati police 4 officer on May 30, 1997, correct? 5 A. Correct. 6 Q. And as I understand it, you began at the 7 police academy as a recruit in January of '97? 8 A. That is correct. 9 Q. What did you do between May or -- or March 10 of '95 and January of '97? 11 A. I re-- I worked for about a year -- I took 12 some time off once I got out of the service and 13 traveled a little bit. And then I worked for about 14 a year as a ball bearing salesman for a local 15 industrial warehouse. 16 Q. What company? 17 A. Motion Industries. 18 Q. Here in Cincinnati? 19 A. Actually, they were located -- my office 20 was located in Middletown. 21 Q. If you recall, about how much time did you 22 take off and do some traveling and then when did you 23 start working for the ball bearing company? 24 A. I recall I took off about three, four</p>
<p style="text-align: right;">Page 35</p> <p>1 A. That's correct. 2 Q. And at that time you held the rank of 3 captain? 4 A. That's correct. 5 Q. And your service in the Marine Corps had 6 been in armor? 7 A. That was my primary MOS, that's correct. 8 Q. I take it you were discharged with an 9 honorable discharge? 10 A. Yes. I went from active duty, and then I 11 reverted to the IRR and I had served some time in 12 the active reserves. 13 Q. But when you went off of active duty -- 14 A. It was an honorable discharge. 15 Q. -- your discharge was an honorable 16 discharge? 17 A. That's correct. 18 Q. Are you still in the IRR? 19 A. That is correct. 20 Q. For the record, IRR stands for Individual 21 Ready Reserve? 22 A. That's correct. 23 Q. While you were in the Marine Corps, did 24 you receive CPR training?</p>	<p style="text-align: right;">Page 37</p> <p>1 months, and then I worked for the company for about 2 a year, roughly. 3 Q. The next page is the continuous service 4 record. It has a Bates number of 1632. We see that 5 January 5, '97 you enroll as a police recruit; June 6 of '97, promoted to police officer and transferred 7 to District 4; February 4 of 2001, transferred to 8 Impound Unit? 9 A. That is correct. 10 Q. And then December 2 of '01, transferred to 11 unit -- to District 1; is that right? 12 A. That's correct. 13 Q. After District 1, if we were to continue 14 your service record, what would we have here? 15 A. I was terminated. 16 Q. And when was that? 17 A. Exact date, I believe, was early March of 18 2003. 19 Q. At the time that you were terminated, 20 though, you were assigned to District 1? 21 A. No. I had been temporarily assigned back 22 to the Impound Unit. 23 Q. So -- 24 A. But it doesn't show as a transfer, because</p>

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1 A. Yes.  
 2 Q. So if there were any founded complaints,  
 3 you would be notified?  
 4 A. I believe when the officer is notified  
 5 either way. And if -- if the officer makes any  
 6 testimony, the officer receives a transcript of what  
 7 the findings of OMI were.  
 8 Q. Okay. Well, then that gets back to my  
 9 original question, that when a -- when a citizen  
 10 files a complaint --  
 11 A. Then --  
 12 Q. -- is the officer notified?  
 13 A. And I'm qualifying that. When the officer  
 14 is notified and testifies, he receives the finding.  
 15 If he -- for example, I don't know if Miss --  
 16 Miss Byrd -- I can't recall if Mrs. Byrd registered  
 17 a complaint or not with regard to this incident. I  
 18 don't recall receiving any notification or giving  
 19 any testimony. That's not to say I didn't do it. I  
 20 just don't recall it.  
 21 Q. Do you -- directing your attention to  
 22 page three of the article --  
 23 A. Uh-huh.  
 24 Q. -- second full paragraph, it says "Officer

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1 Q. When you say "this incident," what  
 2 incident are you referring to?  
 3 A. I'm referring to the Owensby incident.  
 4 Q. What about Mr. Smiley?  
 5 A. I -- I wasn't complained on for excessive  
 6 use of force. Officer George was complained on for  
 7 excessive.  
 8 Q. Okay. The -- going back to that  
 9 paragraph, it says, the -- the second sentence of  
 10 the paragraph says "Four of the complaints alleged  
 11 Officer Caton used obscenities and in one case used  
 12 the n-word."  
 13 A. That is not --  
 14 Q. Do you know if that's accurate or not  
 15 accurate?  
 16 A. I have been accused of that, but that  
 17 particular incident, my partner was black and heard  
 18 the entire conversation and said that never  
 19 happened.  
 20 Q. And -- and you deny it, I take it?  
 21 A. And I deny it.  
 22 Q. Is there anything else, as you look  
 23 through the article, that you believe is inaccurate,  
 24 beyond what you've already stated?

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1 Caton was named in nine citizen complaints" filed  
 2 with OMI.  
 3 A. Uh-huh.  
 4 Q. Do you have any knowledge as to whether or  
 5 not that is accurate?  
 6 A. I believe that's accurate, but what I  
 7 don't believe is accurate is that -- is that I think  
 8 they ranked me as the seventh most complained-on  
 9 officer in the city of Cincinnati, and that's not  
 10 true. I saw the article that said that. I know  
 11 officers are complained on -- complained on more  
 12 times than I do -- than I have been and they --  
 13 Q. Well, do you know that there are six other  
 14 officers that are complained on more than you are?  
 15 A. At least six other officers.  
 16 Q. Okay.  
 17 A. And that I carry the most complaints for  
 18 excessive use of force, that's not accurate, either.  
 19 This -- this incident was actually the first  
 20 incident that an accusation of excessive use of  
 21 force was used. The only -- the only other incident  
 22 that I can possibly recall where excessive force was  
 23 used or -- or complained about was the threat of  
 24 excessive force when I drew my weapon.

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1 MR. HARDIN: Objection.  
 2 You may answer.  
 3 A. I'm going to have to reread it. I'm going  
 4 to have to -- there's quite a few inaccuracies here,  
 5 and they don't tell the full story and they don't --  
 6 the accurate -- it is completely misleading.  
 7 Q. Are you currently working?  
 8 A. No, I am not.  
 9 Q. Since leaving the Cincinnati police force,  
 10 have you held any jobs?  
 11 A. No, I have not.  
 12 MR. MARTINS: We've been going about an  
 13 hour and a half. Why don't we take a short  
 14 break.  
 15 VIDEOPHGRPER: Going to change to  
 16 videotape number 2, Mr. Martins.  
 17 Off the record.  
 18 (Recess taken: 11:19 a.m. - 11:30 a.m.)  
 19 VIDEOPHGRPER: We're on the record. This  
 20 is videotape number 2 for this witness.  
 21 BY MR. MARTINS:  
 22 Q. Sir, on November 7th you had on your  
 23 possession a cell phone; is that right?  
 24 A. That is correct.

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17:00:39 1 MR. HARDIN: Caton.

17:00:39 2 VIDEOGRAPHER: Sorry. Mr. Caton, you have

17:00:39 3 a right to review this videotape deposition

17:00:39 4 prior to its being shown to a court or jury.

17:00:39 5 Will you waive that right?

17:00:39 6 THE WITNESS: No.

17:00:40 7 VIDEOGRAPHER: We're off the record. The

17:00:42 8 time showing is 5:04 p.m.

17:00:42 9 MR. MARTINS: I take it you also want

17:00:49 10 signature on the deposition?

17:00:51 11 MR. HARDIN: Yes. Yes.

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17:00:52 17 (Deposition concluded.)

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PATRICK EDMUND CATON